UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

STEVEN ALVAREZ, Plaintiff, vs. CAROLYN W. COLVIN, Acting Commissioner of Social Security, Defendant.	Case No. EDCV 13-2038-JPR **MEMORANDUM OPINION AND ORDER REVERSING COMMISSIONER**

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying his application for supplemental security income ("SSI"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). This matter is before the Court on the parties' Joint Stipulation, filed July 15, 2014, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner's decision is reversed and this action is remanded for further proceedings.

II. BACKGROUND

Plaintiff was born on March 12, 1987. (Administrative Record ("AR") 150.) He completed the 12th grade and previously worked as a parking valet, courier, and construction laborer. (AR 177.)

On November 12, 2010, Plaintiff filed an application for SSI. (AR 61-62, 150-58.) Plaintiff alleged that he had been unable to work since August 10, 2009 (AR 150), and listed his medical conditions as "not coherent," "racing thoughts," "depressed," "anxious," "OCD," "blank look," "emotional d/o," "bi-polar," "schizophrenia," "schizoaffective," "phychosis [sic]," and "obsessive eating" (AR 176). After Plaintiff's application was denied, he requested a hearing before an Administrative Law Judge. (AR 88-90.) A hearing was held on June 11, 2012, at which Plaintiff, who was represented by counsel, testified, as did his mother and a vocational expert. (AR 26-60.) In a written decision issued June 21, 2012, the ALJ determined that Plaintiff was not disabled. (AR 11-22.) On September 9, 2013, the Appeals Council denied Plaintiff's request for review. (AR 1-3.) This action followed.

III. STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), a district court may review the Commissioner's decision to deny benefits. The ALJ's findings and decision should be upheld if they are free of legal error and supported by substantial evidence based on the record as a whole. Id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence means such evidence as a reasonable person might accept as

adequate to support a conclusion. Richardson, 402 U.S. at 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more than a scintilla but less than a preponderance. Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether substantial evidence supports a finding, the reviewing court "must review the administrative record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1996). "If the evidence can reasonably support either affirming or reversing," the reviewing court "may not substitute its judgment" for that of the Commissioner. Id. at 720-21.

IV. THE EVALUATION OF DISABILITY

People are "disabled" for purposes of receiving Social Security benefits if they are unable to engage in any substantial gainful activity owing to a physical or mental impairment that is expected to result in death or which has lasted, or is expected to last, for a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir. 1992).

A. The Five-Step Evaluation Process

An ALJ follows a five-step sequential evaluation process to assess whether someone is disabled. 20 C.F.R. § 416.920(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first step, the Commissioner must determine whether the claimant is currently engaged in substantial gainful activity; if so, the claimant is not disabled

and the claim must be denied. § 416.920(a)(4)(i). If the claimant is not engaged in substantial gainful activity, the second step requires the Commissioner to determine whether the claimant has a "severe" impairment or combination of impairments significantly limiting his ability to do basic work activities; if not, a finding of not disabled is made and the claim must be denied. § 416.920(a)(4)(ii). If the claimant has a "severe" impairment or combination of impairments, the third step requires the Commissioner to determine whether the impairment or combination of impairments meets or equals an impairment in the Listing of Impairments ("Listing") set forth at 20 C.F.R., Part 404, Subpart P, Appendix 1; if so, disability is conclusively presumed and benefits are awarded. § 416.920(a)(4)(iii).

If the claimant's impairment or combination of impairments does not meet or equal one in the Listing, the fourth step requires the Commissioner to determine whether the claimant has sufficient residual functional capacity ("RFC")[1] to perform his past work; if so, he is not disabled and the claim must be denied. § 416.920(a)(4)(iv). The claimant has the burden of proving he is unable to perform past relevant work. Drouin, 966 F.2d at 1257. If the claimant meets that burden, a prima facie case of disability is established. Id. If that happens or if the claimant has no past relevant work, the Commissioner bears the burden of establishing that the claimant is not disabled because he can perform other substantial gainful work available

[1]RFC is what a claimant can do despite existing exertional and nonexertional limitations. § 416.945; see Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

in the national economy. § 416.920(a)(4)(v). That determination comprises the fifth and final step in the sequential analysis. § 416.920; Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d at 1257.

B. The ALJ's Application of the Five-Step Process

At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity since November 12, 2010, his application date.[2] (AR 13.) At step two, he found that Plaintiff had the severe impairments of "affective disorder, obsessive-compulsive disorder, schizophrenia, psychotic disorder, marijuana dependence, rule out dementia, and rule out induced cognitive disorder." (Id.)

At step three, he determined that Plaintiff's impairments did not meet or equal any of the impairments in the Listing. (AR 14-15.) At step four, the ALJ found that Plaintiff had the RFC to perform

> a full range of work at all exertional levels but with the following nonexertional limitations: [he] can perform simple one to two step instructions; he can have occasional interaction with coworkers and supervisors; he cannot have contact with the general public; and he can be absent from work 5% of the time.

(AR 15.) The ALJ found that Plaintiff could perform his past relevant work as a construction laborer as he actually performed

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[2]The ALJ assessed whether Plaintiff had been under a disability on or after his application date rather than his alleged onset date (see AR 13, 22), noting that the earliest month Plaintiff could receive SSI benefits was the month following the month in which he filed his application (AR 17 (citing § 416.335)). Plaintiff has not challenged that portion of the ALJ's decision.

it and as generally performed in the regional and national economy. (AR 21-22.) He therefore concluded that Plaintiff was not disabled. (AR 22.)

V. DISCUSSION

Plaintiff contends that the ALJ erred in discounting the opinions of his treating physician, Dr. Prakashandra C. Patel, and an examining physician, Dr. Romualdo R. Rodriguez. (J. Stip. at 2-3.) For the reasons discussed below, reversal is warranted.

A. Relevant Facts[3]

On March 4, 2011, Dr. Rodriguez, a "board eligible" psychiatrist, performed a complete psychiatric evaluation of Plaintiff and reviewed at least some of his medical records. (AR 367-73.) They "included records stating that the claimant is 'not coherent and may have bipolar disorder, schizophrenia, or is schizoaffective.'" (AR 367.) Dr. Rodriguez noted that Plaintiff had been psychiatrically hospitalized three times since he turned 21. (AR 368.) He found that Plaintiff reportedly ran errands, went to the store, cooked and made snacks, did household chores, and dressed and bathed himself but that "[r]ecently, someone has to be with him when he is doing these things" and Plaintiff "cannot leave home alone or handle his own cash or pay his own bills." (AR 369.) Plaintiff had a history of marijuana and methamphetamine use, but it was "not known if he [was] still actually using drugs." (Id.)

Upon examination, Dr. Rodriguez found that Plaintiff's eye

[3]Because the parties are familiar with the facts, they are summarized only to the extent relevant to the disputed issues.

contact and interpersonal contact were poor, he was generally uncooperative, and he was unable to spontaneously volunteer information. (Id.) Dr. Rodriguez noted that it was "not clear if [Plaintiff was] under the influence of drugs or alcohol." (Id.) Plaintiff's thought processes were disorganized and "not coherent," and he gave irrelevant answers to questions. (AR 370.) He could perform simple math problems and "serial threes slowly up to 12," though he "talked to himself often," but he could not spell "world" forward or backward. (AR 371.) When asked the similarities between a table and a chair, Plaintiff answered, "I don't know." (Id.)

Dr. Rodriguez diagnosed "[r]ule out schizophrenia," "[r]ule out dementia," and "[r]ule out drug induced cognitive disorder." (Id.) He observed,

> [Plaintiff's] affect appeared disconnected and [he] just smiled during the interview and insisted that everything is "okay." His answers during the mental status exam did not have anything to do with the questions and often he would just ignore the question and not answer.
>
> It is hard to tell if the claimant has developed schizophrenia or dementia or that his psychiatric condition is drug induced. Psychological testing and a tox screen would prove useful to better understand what his true condition is.

(AR 372.)

Dr. Rodriguez opined that Plaintiff was unable to understand, remember, or carry out even simple one- or two-step job instructions. (Id.) He further found that Plaintiff was

"moderately to severely" limited in his ability to (1) relate to and interact with supervisors, coworkers, and the public; (2) maintain concentration, attention, persistence, and pace; (3) adapt to common workplace stresses; (4) maintain regular attendance and consistently perform work activities; and (5) perform work activities without special or additional supervision. (AR 372-73.) Dr. Rodriguez believed that Plaintiff was incapable of managing his own funds. (AR 373.)

On September 19, 2011, Dr. Patel completed a two-page check-off form titled "Medical Opinion Re: Ability to Do Work-Related Activities (Mental)."[4] (AR 424-25.) Dr. Patel opined that Plaintiff was "[s]eriously limited [in], but not precluded" from, carrying out very short and simple instructions and adhering to basic standards of neatness and cleanliness.[5] (Id.) Dr. Patel opined that Plaintiff was "[u]nable to meet competitive standards" in the following areas: understanding and remembering very short and simple instructions, maintaining regular attendance, working with or around others without being distracted, asking simple questions and requesting assistance, getting along with coworkers, dealing with normal work stress, dealing with the stress of semiskilled and skilled work,

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[4]Dr. Patel did not list an area of specialization, but Plaintiff testified that Dr. Patel was his treating psychiatrist. (AR 40-41, 47; see also AR 243.)

[5]The form defined "seriously limited, but not precluded" as "ability to function in this area is seriously limited and less than satisfactory, but not precluded," and stated that "[t]his is a substantial loss of ability to perform the work-related activity." (AR 424.)

interacting with the public, and maintaining socially appropriate behavior.[6] (Id.) Dr. Patel opined that Plaintiff had "[n]o useful ability to function" in the following areas: remembering worklike procedures; maintaining attention for a two-hour segment; sustaining an ordinary routine without special supervision; making simple work-related decisions; completing a normal workday and workweek; performing at a consistent pace; accepting instructions and responding appropriately to criticism from supervisors; responding appropriately to changes in a routine work setting; being aware of normal hazards and taking appropriate precautions; understanding, remembering, and carrying out detailed instructions; setting realistic goals and making plans independently of others; traveling in an unfamiliar place; and using public transportation.[7] (Id.)

In the section of the form for explaining his findings, Dr. Patel wrote that Plaintiff "cannot comprehend" and "suffers from schizophrenia, the type which affects his cognition/memory and ability to function socially." (AR 425.) Dr. Patel wrote that Plaintiff is at times "mute" and "at times able to respond by only one or two words." (Id.) Dr. Patel opined that Plaintiff "cannot retain any type of instructions given to him" and would be "unable to work in any working condition." (Id.)

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[6]The form defined "unable to meet competitive standards" as "your patient cannot satisfactorily perform this activity independently, appropriately, effectively on a sustained basis in a regular work setting." (AR 424.)

[7]The form defined "no useful ability to function" as "an extreme limitation," meaning that "your patient cannot perform this activity in a regular work setting." (AR 424.)

The ALJ gave "some weight" to examining physician Rodriguez's opinion, noting that his "assessment regarding a moderate impairment in the ability to relate [to] and interact with supervisors, coworkers, and the public" was consistent with his objective findings. (AR 20.) The ALJ stated that he was not giving "full weight" to Dr. Rodriguez's opinion because "his assessment that [Plaintiff] could not understand, remember, and carry out simple one or two [step] job instructions" was inconsistent with Plaintiff's aunt's statements in a function report that he could make a sandwich, use the microwave, and cook eggs, which "show [Plaintiff's] ability to follow simple instructions." (Id.; see also AR 190.)

The ALJ gave "some weight" to Dr. Patel's opinion, finding that the record did indeed show that Plaintiff's schizophrenia precluded him from interacting appropriately with the general public. (AR 21.) The ALJ found, however, that it was "unclear" whether Dr. Patel had a "long treating relationship" with Plaintiff that would have "enabled Dr. Patel to provide a longitudinal picture of [Plaintiff's] medical condition." (Id.) The ALJ stated that "[d]ue to the lack of such information, [he] does not give full weight to Dr. Patel's opinion." (Id.)

B. Applicable Law

Three types of physicians may offer opinions in Social Security cases: (1) those who directly treated the plaintiff, (2) those who examined but did not treat the plaintiff, and (3) those who did not treat or examine the plaintiff. Lester, 81 F.3d at 830. A treating physician's opinion is generally entitled to more weight than that of an examining physician, and an examining

physician's opinion is generally entitled to more weight than that of a nonexamining physician. Id.

This is true because treating physicians are employed to cure and have a greater opportunity to know and observe the claimant. Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996). If a treating physician's opinion is well supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the record, it should be given controlling weight. § 416.927(c)(2). If a treating physician's opinion is not given controlling weight, its weight is determined by length of the treatment relationship, frequency of examination, nature and extent of the treatment relationship, amount of evidence supporting the opinion, consistency with the record as a whole, the doctor's area of specialization, and other factors. § 416.927(c)(2)-(6).

When a treating or examining physician's opinion is not contradicted by other evidence in the record, it may be rejected only for "clear and convincing" reasons. See Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008) (quoting Lester, 81 F.3d at 830-31). When a treating or examining physician's opinion is contradicted, the ALJ must provide only "specific and legitimate reasons" for discounting it. Id. The weight given an examining physician's opinion, moreover, depends on whether it is consistent with the record and accompanied by adequate explanation, among other things. § 416.927(c)(3)-(6). Furthermore, "[t]he ALJ need not accept the opinion of any physician, including a treating physician, if that opinion is brief, conclusory, and inadequately supported by

clinical findings." Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002); accord Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th Cir. 2004).

C. The ALJ Erred In Assessing Dr. Patel's Opinion

As discussed, the ALJ found that it was "unclear" whether Plaintiff had a "long treatment relationship" with Dr. Patel, which would have "enabled Dr. Patel to provide a longitudinal picture of [Plaintiff's] medical condition." (AR 21.) The ALJ concluded that Dr. Patel's opinion was not entitled to full weight "[d]ue to the lack of such information." (Id.) The ALJ gave no other reason for discounting Dr. Patel's opinion. Plaintiff contends that reversal is appropriate because the ALJ failed to support his "conclusory reasons" for rejecting Dr. Patel's findings and because the ALJ should have further developed the record by "contacting Dr. Patel regarding his treating relationship with [P]laintiff." (J. Stip. at 7.) Reversal is warranted because the ALJ failed to fulfill his duty to develop the record and failed to provide a sufficient reason for discounting Dr. Patel's opinion.

In determining disability, the ALJ has a "duty to fully and fairly develop the record and to assure that the claimant's interests are considered." Garcia v. Comm'r of Soc. Sec., 768 F.3d 925, 930 (9th Cir. 2014); see also Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003) ("In making a determination of disability, the ALJ must develop the record and interpret the medical evidence."). Nonetheless, it remains the plaintiff's burden to produce evidence in support of his disability claims. See Mayes v. Massanari, 276 F.3d 453, 459

(9th Cir. 2001). "[A]mbiguous evidence, or the ALJ's own finding that the record is inadequate to allow for proper evaluation of the evidence, triggers the ALJ's duty to conduct an appropriate inquiry." McLeod v. Astrue, 640 F.3d 881, 885 (9th Cir. 2011) (internal quotation marks omitted); accord Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th Cir. 2001). "The ALJ may discharge this duty in several ways, including: subpoenaing the claimant's physicians, submitting questions to the claimant's physicians, continuing the hearing, or keeping the record open after the hearing to allow supplementation of the record." Tonapetyan, 242 F.3d at 1150. The ALJ's duty to develop the record is heightened, moreover, when the claimant may be mentally ill and thus unable to protect his own interests. Id.; see also Dervin v. Astrue, 407 F. App'x 154, 156 (9th Cir. 2010).

Here, the ALJ specifically found that the record was "unclear" and "lack[ed]" information regarding Dr. Patel's treatment relationship with Plaintiff, and that the doctor's opinion therefore could not be fully credited. The ALJ's explicit finding that the record was inadequate triggered his duty to develop it. See McLeod, 640 F.3d at 885. The ALJ failed to discharge that duty by gathering more evidence or leaving the record open, and instead he simply rejected most of Dr. Patel's opinion. In doing so, the ALJ erred. See Smolen, 80 F.3d at 1288 (finding that "[i]f the ALJ thought he needed to know the basis of [a physician's] opinions in order to evaluate them, he had a duty to conduct an appropriate inquiry, for example, by subpoenaing the physicians or submitting further questions to them" or by "continu[ing] the hearing to augment the record");

Dervin, 407 F. App'x at 156 (noting that "[i]n cases of chronic mental impairment . . . the ALJ is required to gather all records of past treatment"); § 416.912(d) ("Before we make a determination that you are not disabled, we will develop your complete medical history for at least the 12 months preceding the month in which you file your application . . . .").

The ALJ's failure to further develop the record, moreover, does not appear to have been harmless. See Molina v. Astrue, 674 F.3d 1104, 1115 (9th Cir. 2012) (error harmless when "inconsequential to the ultimate disability determination"). Plaintiff reported in a "Disability Report – Appeal" that he first saw Dr. Patel on June 13, 2011, and that his next appointment was scheduled for July 12. (AR 243.) At the June 11, 2012 hearing, moreover, Plaintiff and his mother both testified that Plaintiff saw Dr. Patel every month. (See AR 41, 46-47, 51.) Thus, it appears that Dr. Patel likely saw Plaintiff at least a few times before rendering his September 19, 2011 opinion. Moreover, the other record evidence is not inconsistent with Dr. Patel's opinion, as it shows that Plaintiff was involuntarily hospitalized and treated for his psychiatric conditions three times: August 11 to 13, 2009 (see AR 296-346),[8] November 11 to 12, 2010 (see AR 265-73), and July 25 to August 5, 2011 (see AR 392-98, 400-22). Plaintiff's diagnoses included

[8]Following this hospitalization, Plaintiff was discharged to Cedar House, apparently a rehabilitation facility. (See AR 296-97; see also 283-84 (Aug. 27, 2009 note stating that Plaintiff needed refill of medication and was living at "Cedar House rehab").) The record does not contain any records from Cedar House.

psychotic disorder (AR 296, 303, 395), rule out schizoaffective disorder (AR 267), cannabis abuse (id.; see also AR 303, 401), bipolar I disorder (AR 267), schizophrenia "paranoid type" (AR 401), and rule out "[o]ther substance induced Psychotic disorder" (AR 303). Dr. Rodriguez, moreover, examined Plaintiff and found limitations similar to those found by Dr. Patel, such as an inability to understand, remember, or carry out simple one- or two-step job instructions and moderate to severe limitations on his ability to maintain concentration, attention, persistence, and pace; adapt to common workplace stresses; maintain regular attendance; and perform work activities without special or additional supervision. (AR 372-73; compare AR 424-25 (Dr. Patel's finding that Plaintiff had "[n]o useful ability to function" in areas including maintaining attention for two hours, sustaining ordinary routine without special supervision, completing normal workweek without interruption, performing at consistent pace, and responding to changes in routine work setting and that he was "[u]nable to meet competitive standards" in areas including understanding and remembering very short and simple instructions, maintaining regular attendance, and dealing with normal work stress).

Moreover, other than the lack of evidence regarding Dr. Patel's treatment relationship with Plaintiff, the ALJ provided no reason for discounting his opinion. Indeed, even if Dr. Patel were an examining physician who had no treatment relationship at all with Plaintiff, the ALJ still would have been obligated to provide at least specific and legitimate reasons for discounting his opinion, and more likely clear and convincing reasons given

that little in the record contradicted it. Thus, this case must be remanded so that the ALJ can further develop the record and reassess the opinion of treating physician Dr. Patel.

D. Dr. Rodriguez's Opinion

Plaintiff contends that the ALJ "failed to provide specific and legitimate reasons, supported by substantial evidence, for implicitly rejecting [Dr. Rodriguez's] opinions that [P]laintiff is moderately to severely limited in his ability to maintain regular attendance in the work place and perform work activities on a consistent basis as well as to perform work activities without special or additional supervision." (J. Stip. at 15.) Indeed, it appears that the ALJ may have erred in assessing Dr. Rodriguez's decision. The ALJ rejected Dr. Rodriguez's opinion that Plaintiff could not understand, remember, or carry out simple one- or two-step job instructions based solely on Plaintiff's aunt's statements that he could make a sandwich, use a microwave, and cook eggs. (AR 20; see also AR 190.) Even assuming that is a legally sufficient reason, the ALJ failed to give any reasons for rejecting Dr. Rodriguez's other findings, such as his conclusion that Plaintiff was "moderately to severely" limited in his ability to adapt to common workplace stresses and perform work activities without special or additional supervision. (See AR 372-73.) Because the Court remands this case for further development of the record, however, it need not resolve this issue. On remand, the ALJ will necessarily reassess Dr. Rodriguez's opinion in light of the additional evidence, which will presumably include Dr. Patel's treatment notes.

E. Remand for Further Proceedings Is Appropriate

When, as here, an ALJ errs in denying benefits, the Court generally has discretion to remand for further proceedings. See Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). When no useful purpose would be served by further administrative proceedings, however, or when the record has been fully developed, it is appropriate under the "credit-as-true" rule to direct an immediate award of benefits. Id. at 1179 (noting that "the decision of whether to remand for further proceedings turns upon the likely utility of such proceedings"); see also Garrison v. Colvin, 759 F.3d 995, 1019-20 (9th Cir. 2014).

Under the credit-as-true framework, three circumstances must be present before the Court may remand to the ALJ with instructions to award benefits: "(1) the record has been fully developed and further administrative proceedings would serve no useful purpose; (2) the ALJ has failed to provide legally sufficient reasons for rejecting evidence, whether claimant testimony or medical opinion; and (3) if the improperly discredited evidence were credited as true, the ALJ would be required to find the claimant disabled on remand." Garrison, 759 F.3d at 1020. When, however, the ALJ's findings are so "insufficient" that the Court cannot determine whether the rejected testimony should be credited as true, the Court has "some flexibility" in applying the credit-as-true rule. Connett v. Barnhart, 340 F.3d 871, 876 (9th Cir. 2003); see also Garrison, 759 F.3d at 1020 (noting that Connett established that credit-as-true rule may not be dispositive in all cases). This flexibility should be exercised "when the record as a whole

creates serious doubt as to whether the claimant is, in fact, disabled within the meaning of the Social Security Act." Garrison, 759 F.3d at 1021.

Here, under Connett, remand for further proceedings is appropriate. As discussed, the ALJ failed to fully develop the record, and further administrative proceedings are required to allow him to do so. After obtaining additional evidence, which presumably will include Dr. Patel's treatment notes, the ALJ must reassess the medical-opinion evidence. Based on the current record, the Court cannot determine whether either medical opinion should be credited as true or whether Plaintiff is in fact disabled. Moreover, the medical evidence indicates that Plaintiff's conditions may stem from substance abuse, in which case he would not be entitled to benefits. (See, e.g., AR 372 (Dr. Rodriguez finding unclear whether "psychiatric condition is drug induced"); AR 303 (diagnosing possible "[o]ther substance induced Psychotic disorder")); see also 42 U.S.C. § 423(d)(2)(C) (claimant not disabled "if alcoholism or drug addiction would . . . be a contributing factor material to the Commissioner's determination that the individual is disabled"). If on remand the ALJ determines that Plaintiff is disabled, he must then assess whether Plaintiff would still be found disabled if he stopped abusing substances. See Bustamante v. Massanari, 262 F.3d 949, 955 (9th Cir. 2001) ("If the ALJ finds that the claimant is disabled and there is 'medical evidence of [his or her] drug addiction or alcoholism,' then the ALJ should proceed under §§ 404.1535 or 416.935 to determine if the claimant 'would still [be found] disabled if [he or she] stopped using alcohol or

drugs.'" (alterations in original)); § 416.935 ("If we find that you are disabled and have medical evidence of your drug addiction or alcoholism, we must determine whether your drug addiction or alcoholism is a contributing factor material to the determination of disability . . . .").

VI. CONCLUSION

Consistent with the foregoing, and pursuant to sentence four of 42 U.S.C. § 405(g),[9] IT IS ORDERED that judgment be entered REVERSING the decision of the Commissioner, GRANTING Plaintiff's request for remand, and REMANDING this action for further proceedings consistent with this Memorandum Opinion. IT IS FURTHER ORDERED that the Clerk serve copies of this Order and the Judgment on counsel for both parties.

DATED: December 22, 2014

JEAN ROSENBLUTH
JEAN ROSENBLUTH
U.S. Magistrate Judge

[9]This sentence provides: "The [district] court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing."